IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1339 OF 2005

Smt.Shafia Abdul Karim Patel).. Petitioner

Versus

Hussein Suleman Patil and others).. Respondents

Mr.S.G.Surana for the Petitioner.

Mr.S.G.Kudle for Respondent Nos.1 and 2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 24TH MARCH 2005

P.C.:

. The challenge in this Petition is to the order dated 7th February 2005 passed by the Civil Judge, Junior Division, Khalapur below Exhibit 89/D in RCS No.15 of 1999 by which the Plaintiff has been disallowed from leading secondary evidence in respect of the Power of Attorney dated 30th April 1996. The learned Judge has opined that the secondary evidence cannot be permitted since the contingency prescribed under Section 65 of the Indian Evidence Act has not arisen.

2. The Suit has been filed for a declaration that the Power of Attorney executed and the sales of various properties which have been effected pursuant to such a Power of Attorney are invalid. Although a xerox copy has been produced in view of the Defendants not having

produced the original, the learned Judge is of the view that no evidence need be produced by the Plaintiff in respect of the xerox copy of the Power of Attorney.

3. In my view, such secondary evidence can be led by the Plaintiff. The learned Judge will then decide what is the evidentiary value of such evidence and whether any credence ought to be given to such evidence. To stop the Plaintiff from producing such evidence at the threshold itself will in my opinion be incorrect.

4. Petition allowed as aforesaid. The trial Court to permit the Petitioner to lead evidence in respect of the xerox copy of the Power of Attorney which is already on record.